

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STANLEY NEAL MURPHY,

CV. 05-235-HU

Petitioner,

ORDER

v.

SHARON BLACKETTER,

Respondent.

PANNER, Judge

Petitioner, an inmate at Eastern Oregon Correctional Institution, brings this habeas corpus proceeding pursuant to 28 U.S.C. § 2254. Petitioner has filed a motion to voluntarily dismiss this proceeding. The motion (#5) is GRANTED. This proceeding is DISMISSED, without prejudice.

Petitioner also has filed a motion entitled "Motion to Allow, Motion to Equitably Toll the Statute of Limitations Contained in 28 U.S.C. § 2244(d)(1)". The motion (#6) is DENIED AS MOOT. Petitioner is advised that to the extent that he seeks leave to reopen this habeas proceeding at such time as the U.S. Supreme Court rules that Apprendi v. New Jersey, 530 U.S. 466 (2000) applies retroactively, that relief previously was granted in Murphy

v. Hill, 01-699-MA (dismissing without prejudice and with leave to reopen). Accordingly, his renewed request to toll the limitation period in this proceeding is moot.

CONCLUSION

Based on the foregoing, petitioner's motion for voluntary dismissal (#5) is GRANTED, and petitioner's motion to equitably toll the statute of limitations (#6) is DENIED AS MOOT. This proceeding is DISMISSED, without prejudice.

IT IS SO ORDERED.

DATED this 24 day of June, 2005.


Owen M. Panner
United States District Judge